



THE TULALIP TRIBES

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The Tulalip Tribes are the successors in interest to the Snohomish, Snoqualmie, and Skykomish tribes and other tribes and band signatory to the Treaty of Point Elliott

March 11, 2011

Ms. Mary Milam
U.S. Department of the Interior
1849 C Street, N.W., MS 4141-MIB
Washington, D.C., 20240

Re: Comments from the Tulalip Tribes of Washington at DOI request; Department of the Interior DRAFT Policy on Consultation with Indian Tribes

Ms. Milam:

The Tulalip Tribes of Washington would like to thank you for the opportunity to comment on the Department of Interior (DOI) draft consultation policy with Indian Tribes. In reviewing the draft policy, it is evident that the DOI has listened to concerns from Indian Country. Specifically, it is clear that your intent is to include Tribes from the beginning and to engage in on-going evaluation of the policy. The Tulalip Tribes believes that this policy provides the necessary and needed framework for meaningful and effective consultation between Indian Tribes and federal agencies. We thank you for the work you have done.

Below, The Tulalip Tribes addresses the Policy by section number. We are providing detailed recommendations to strengthen the implementation of the framework.

1. Section II – Guiding Principles

- We strongly recommend that the following language in the second paragraph be deleted, “....or staff who can ensure that Tribal concerns will be brought forward to final decisions makers in the event that the decision makers are not present at the consultation meeting. Department Officials with decision making authority must be present in order for consultation to be meaningful and productive.

2. Section III – Definitions

- **D. Departmental Action with Tribal Implications.** We strongly recommend that the underlined language, “or any potential adverse effect” be added to the term “substantial direct effect” in attempting to define when a departmental action has tribal implications.
- **G and H. Tribal Governance Officer (TGO) and Tribal Liaison Official (TLO).** Persons designated to these positions must have a reasonable amount of experience and knowledge of Indian Tribes. We strongly recommend that these are requirements of the positions. Furthermore, Tribes should be afforded the opportunity to comment on potential candidates.
- We recommend you add and define the term Negotiated Rule Making as it applies to consultation.

3. Section IV. Training

- Define the acronym DOIU as referenced in this section.
- We recommend that the underlined language be added to the end of the following sentence "...which includes training to improve sensitivity and understanding of traditional American Indian cultures and governments, in addition to the modern challenges and realities of Indian Tribes today."

4. Section VI. Accountability and Reporting

- We recommend adding the underlined language to the second paragraph of this section. "Indian Tribes are encouraged to submit annual reports on consultation efforts and these reports shall be used in evaluating the current process and improving the consultation efforts."

5. Section VII. Innovations in Consultation Practices

- We recommend substituting the word "shall" for the word "may" in the first paragraph.
- We recommend substituting the words "shall consider" for the words "will be open" in the second paragraph.
- We recommend substituting the word "shall" for the word "may" in the third paragraph.

6. VIII. Consultation Guidelines

- **Initiating Consultation.** We recommend that the timeline for attempting to provide notice should be changed from "30" days to "45" days.
- **D.1. Initial Planning Stage.** It is our understanding that negotiated rulemaking is negotiating the terms of a proposed administrative rule after the rule is drafted and published in the federal register. Once published, affected interest groups, or Indian Tribes, have the ability to comment and "negotiate" these rules. Asking Tribes for comments at this stage is too late to effectively and efficiently deal with rules and regulations that have a direct effect on Indian Tribes. Tribes must be involved prior to the start of drafting a rule or regulation. Negotiated rule making is not consultation. It is an important step in the development of policy; however, it should not replace initial and on-going consultation during the development of policy.
- We recommend you delete the words "when possible" in the first paragraph.
- We recommend you substitute the word "should" for the word "may" in the third paragraph.
- **D.2. Proposed Development Stage.** This section discusses the use of a Tribal Leader Task Force. We encourage the use of task forces in some circumstances; however, department or bureau use of a Tribal Leader Specific Task Force cannot be considered in lieu of formal consultation with tribal leaders or representatives and should not be considered as such.
- **D.3. Implementation of Final Federal Action Stage.** The DOI will make every attempt to address in writing to Tribes on final decisions in light of Tribal comments. Tribes should be given a copy of this report prior to final publishing.
- We recommend you substitute the word "should" for the word "may" in the second paragraph.

Conclusion

The Tulalip Tribes is satisfied that the policy as written provides the necessary and needed framework for meaningful and effective consultation between Indian Tribes and federal agencies; however, the real and present challenge will be individual bureau and office compliance with the policy during implementation.

Our recommended changes will help to ensure the intentions of the policy are met during provided that the federal agencies comply.

Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Mel R. Sheldon Jr.", with a stylized flourish at the end.

Mel R. Sheldon Jr.
Chairman

Cc: TTT BOD
Governmental Affairs, Tulalip Tribes
Lisa M Koop, Tulalip Tribes Attorney